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December 1, 2023

**VIA ELECTRONIC SUBMISSION**

Los Angeles City Council  
201 N. Spring Street, 4<sup>th</sup> Floor  
Los Angeles, CA 90012

**Re: Appeal Pursuant to Government Code Section 65943(c) Case No. ADM-2023-4205-DB-ED1-VHCA / 10898 W Olinda St**

To the Los Angeles City Council:

I represent Mamba 24 LLC, the property owner and applicant, respectively, (collectively referred to as the "Applicant"), of the proposed 78-unit 100 percent affordable housing development located at 10898-10898 ½ W Olinda St (the "Project") in the City of Los Angeles ("City"). The Project seeks to use the City's streamlined ministerial approval process for 100 percent affordable projects granted by the Mayor's Executive Directive No. 1 ("ED 1"), originally issued on December 16, 2022. Accordingly, pursuant to Government Code Section 65941.1 and ED 1's implementing guidelines published by the City ("ED 1 Guidelines"), the Applicant submitted a Housing Crisis Act ("HCA") preliminary application ("HCA Preliminary Application") for the Project on March 15, 2023, thereby vesting the Project against subsequent changes in City ordinances, policies, and standards, subject to a timely filing of the Project's application materials as required by ED 1. On June 21, 2023, the Applicant timely filed these application materials for the Project with the Department of City Planning ("DCP") and the Project was assigned case number ADM-2023-4205-DB-ED1-VHCA ("Case Filing").<sup>1</sup> On June 12, 2023, the Mayor issued a revised version of ED 1 ("Revised ED 1") that no longer permitted 100 percent affordable projects proposed to be located on single-family zoned properties with General Plan land use designations that permit multifamily development to be eligible for streamlined ministerial processing.

On July 6, 2023, DCP issued a letter to the Applicant that was not titled, but included language stating: "The proposed project located at 10898, 10898 ½, and

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<sup>1</sup> The case number ADM-2023-4205-DB-ED1-VHCA includes the following suffixes as defined by DCP's website: "DB" meaning Density Bonus, "VHCA" meaning Vesting Housing Crisis Act, and "ED1" meaning Executive Directive 1.

10900 West Olinda St is in the R1-1-CUGU zone and is not eligible for ED1 processing". The July 6, 2023 letter is herein referred to as the "Notice of Ineligibility" (attached as Exhibit A). The Notice of Ineligibility states that other entitlement options *may be available* to the Applicant to pursue the Project, but does not provide specific options or directions on how to proceed with processing and clearly states that the Project may no longer use ED 1. Curiously, the Notice of Ineligibility also makes no reference to the Applicant's previously filed HCA Preliminary Application and provides no explanation as to why the Project is not vested under the City's regulations in place at that time – including the original ED 1 which unquestionably applied to single family zoned properties with General Plan/Community Plan land use designations that permit multifamily development such as the Project site.

On July 10, 2023, DCP issued a letter to the Applicant titled "Status of Project Review: Application Incomplete and Case Processing on Hold," which listed four items that were required to be provided or revised to proceed with the processing of the case (attached as Exhibit B).

On August 4, 2023, the City issued a letter titled "Second Status of Project Review: Application Incomplete and Case Processing on Hold" ("Second Status of Project Review Letter") which is attached as Exhibit C. In this letter, the City references the Notice of Ineligibility to justify the conversion of the case to a "regular entitlement process" using case number CPC-2023-4205-DB-PHP-VHCA, along with an explanation that the case was considered converted as of July 6 (the date of the Notice of Ineligibility) to a discretionary City Planning Commission review process based on the procedures specified in LAMC Section 12.22.A.25 for off-menu density bonus incentives and waivers. The Second Status of Project Review Letter asks the Applicant to pay \$35,256.86 of additional fees to continue the discretionary entitlement processing of the Project and to provide the materials referenced in the July 10, 2023 "Status of Project Review: Application Incomplete and Case Processing on Hold" letter in addition to "materials related to needed CEQA analysis." Importantly, the Second Status of Project Review Letter states that the "project remains vested in the LAMC provisions and land use plans in effect on the date of your complete Preliminary Application." Despite acknowledging the Preliminary Application vesting, the City cites the narrow vesting of the "LAMC provisions and land use plans" instead of the "ordinances, policies, and standards" which may be vested through a HCA Preliminary Application.<sup>2</sup> ED 1, a formally issued executive order, is a policy which may

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<sup>2</sup> Government Code Section 65589.5(o)(1). Refer to Section II.B of this letter for further discussion of the importance of this distinction.

be vested such that the Project is still eligible for ED 1 ministerial processing based on the date of the HCA Preliminary Application prior to the revision of ED 1.

On September 27, 2023, the Applicant responded to the first “Status of Project Review: Application Incomplete and Case Processing on Hold” letter dated July 10, within the required 90 day timelines as stipulated by State Law SB330 and the HCA Preliminary Application to retain vesting rights (Exhibit D). There was no response provided to the Applicant by the City within the 30 day limits as required under Government Code Section 65943(a) which expired on October 27, 2023. As such, under state law SB330 and the Housing Accountability Act (“HAA”), this case, ADM-2023-4205-DB-ED1-VHCA, shall be deemed complete.

Based on the content of the Notice of Ineligibility, the discontinuation of ministerial case processing efforts by DCP, and the forced conversion of the case to a discretionary City Planning Commission case, the City has effectively denied this 100% affordable housing Project’s ministerial Case Filing. However, as a matter of State law the HCA Preliminary Application filed for the Project grants vesting protections that require the City’s continued ED 1 processing of the Case Filing, as the Project became vested prior to the issuance of the Revised ED 1. As such, this appeal is filed pursuant to Government Code Section 65943(c) to request that the City rescind the Notice of Ineligibility, rescind the Second Status of Project Review Letter, convert the entitlement case number back to an ED 1 case, acknowledge that the Project has State law vested rights to utilize ED 1 based on the filing of the HCA Preliminary Application, and reinstate processing of the Project’s Case Filing under ED 1, consistent with the express provisions and intent of the HCA and the Housing Accountability Act (“HAA”).

## I. ED 1 AND PROJECT BACKGROUND

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### A. Overview of ED 1’s Provisions.

On December 12, 2022, pursuant to Los Angeles Administrative Code Section 8.29, the City’s Mayor declared the existence of a local emergency in the City due to the City’s ongoing homelessness crisis (“Emergency Declaration”).<sup>3</sup> Shortly thereafter,

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<sup>3</sup> Los Angeles Administrative Code Section 8.29 authorizes the Mayor at times of emergencies to “promulgate, issue and enforce rules, regulations, orders and directives which the [Mayor] considers necessary for the protection of life and property.” Such rules, regulations, orders and directives shall take effect immediately upon their issuance, and copies thereof shall be filed in the Office of the City Clerk.

on December 16, 2022, the Mayor issued ED 1 – a formal Executive Order – which authorized the expedited ministerial issuance of all necessary City approvals for the construction of temporary shelters and 100 percent affordable housing projects meeting certain criteria. Specifically, ED 1 established the following relevant provisions:

- Applications for 100 percent affordable housing projects or shelters are deemed exempt from discretionary review processes otherwise required by the Los Angeles Municipal Code (“LAMC”), as long as such plans do not require any zoning change, variance, or General Plan amendment.
- All City departments are directed to process all plans for such 100 percent affordable housing projects or shelters using the streamlined ministerial review process currently used for projects eligible under Government Code section 65913.4 (i.e., the ministerial review process created by Senate Bill 35).
- An application for the development of a 100 percent affordable housing project or shelter may use the density permitted for that site either by the applicable zoning or the General Plan Land Use Designation, consistent with state law. In addition, a project may utilize the State Density Bonus and LAMC bonuses, incentives, waivers and concessions if such are in compliance with the applicable requirements.

On February 9, 2023, the City’s Planning, Building and Safety, and Housing Departments promulgated the ED 1 Guidelines, which provide guidance for applicants seeking to file an application for projects that are eligible for ED 1’s ministerial approval process. Specifically, the ED 1 Guidelines established the following relevant guidance:

- A “100 percent affordable housing project” is defined as a housing project with five or more units, and with all units affordable either at 80 percent of Area Median Income (“AMI”) or lower under U.S. Department of Housing and Urban Development (“HUD”) rent levels, or at mixed income with up to 20 percent of units at 120 percent AMI (California Department of Housing and Community Development [“HCD”] rent levels) and the balance at 80 percent AMI or lower (HUD rent levels). (ED 1 Guidelines p. 2.)
- Projects requiring a legislative action (e.g., General Plan Amendment, Zone Change, Height District Change), seeking a deviation from development standards (e.g., adjustment, variance, specific plan exception, waiver of dedication/Improvement), or that require

consideration of a Coastal Development Permit or are subject to the Subdivision Map Act are ineligible for ED 1's ministerial approval process. (ED 1 Guidelines p. 2.)

- ED 1 projects *shall utilize* the maximum allowable base density under the zoning ordinance, specific plan or zoning overlay, or General Plan land use designation. (ED 1 Guidelines p. 10, emphasis added.)
- Through the ED 1 Ministerial Approval Process, City Planning will review only the objective development standards of the Zoning Code and of any applicable Specific Plans, Redevelopment Plan, Historic Preservation Overlay Zone, Community Plan Implementation Overlay or other Zoning Overlay areas. Any requested State Density Bonus and LAMC bonuses, incentives, waivers and concessions that are allowable through the incentive programs may be used to achieve compliance with applicable objective zoning standards. (ED 1 Guidelines p. 4.)
- *An ED 1 project may qualify for vesting of City ordinances, policies, and standards through either the submittal of plans sufficient for a complete plan check to LADBS, consistent with LAMC §12.26-A.3 or the submittal of a complete HCA Vesting Preliminary Application prior to case filing.*<sup>4</sup> (ED 1 Guidelines p. 11.) (Emphasis added).
- Projects eligible for the ED 1 Ministerial Approval Process shall be exempt from California Environmental Quality Act (CEQA) as a ministerial project and from Site Plan Review procedures, pursuant to LAMC §16.05 (or Project Review, pursuant to LAMC §13 B.2.4, as the Site Plan Review process will be referred to after the July 2023 operative date of Chapter 1A of the new Zoning Code). In addition, no public hearings will be required, and the

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<sup>4</sup> The ED 1 Guidelines provide the following additional direction to project applicants regarding HCA vesting protections: "*Most housing projects qualify to submit an optional HCA Vesting Preliminary Application, which 'locks in' local planning and zoning rules at the time the complete application is submitted.* To initiate a request for HCA vesting rights, submit a Housing Crisis Act Vesting Preliminary Application (CP-4062) Form and the required materials through City Planning's Online Application Portal. Email Planning.HCA@lacity.org or visit City Planning's HCA implementation page (<https://planning.lacity.org/development-services/housing-crisis-act>) for more information." (ED 1 Guidelines p. 14, emphasis added.)

Administrative Compliance Letter will not be subject to appeals. (ED 1 Guidelines p. 4.)

- Pre-application referrals within the [Planning] department shall be reviewed concurrently for ED 1 projects, provided that the request for the referrals along with the applicable materials are submitted through the City Planning's Online Application System (OAS) (<https://plncts.lacity.org/oas>). City Planning *affordable housing referral forms*, Redevelopment Project referral forms, Project Planning referral forms, Historic Preservation Overlay Zone referral forms, and *Housing Crisis Act Vesting Preliminary Applications* shall be assigned to staff for review within two (2) business days of receipt of all required documents and payment of fees (when applicable). Within ten (10) business days of receiving a complete set of information, staff will either issue the applicable referrals or provide the applicant with all information required in order to issue the referrals. (ED 1 Guidelines p. 3, emphasis added.)

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## B. City's Revision of ED 1 and Determination of Ineligibility for Processing Under ED 1

On June 12, 2023, the Mayor issued the Revised ED 1, which altered the originally issued ED 1, in relevant part, as follows (new language is shown in underline):

- Applications for 100% affordable housing projects, or for Shelter as defined in Section 12.03 of the Los Angeles Municipal Code (LAMC) (hereinafter referred to as Shelter), shall be, and hereby are deemed exempt from discretionary review processes otherwise required by either the zoning provisions of Chapter 1 of the LAMC or other Project Review including Site Plan Review as described in LAMC Section 16.05 and LAMC Section 13B.2.4, as long as such plans do not require any zoning change, variance, or General Plan amendment, and in no instance shall the project be located in a single family or more restrictive zone. All City departments are directed to process all plans for such 100 percent affordable housing projects or Shelter using the streamlined ministerial review process currently used for projects eligible under Government Code section 65913.4, State Density Bonus law.

The Revised ED 1 was not accompanied by any explanation by the City of why these changes were being made, nor were the ED 1 Guidelines revised to reflect the

changes. Moreover, the Revised ED 1 does not contain any new or revised language addressing vested rights.

### C. Project Application Using ED 1 and Density Bonus

The Project involves the construction, use, and maintenance of a new three-story residential building with 78 affordable multi-family apartment units with associated parking, open space and uses ancillary to the residential use. In conformance with ED 1's affordability requirements, of the 78 units, 14 units will be reserved for Moderate Income households, 62 units will be reserved for Low Income households, one unit will be reserved for Very Low Income, and one unit will be unrestricted for a manager. The Project site is located in the Sun Valley - La Tuna Canyon ("Community Plan") area and is comprised of two lots with a total area of approximately 30,304 square feet. The Community Plan designates the Project site for Low Residential land uses and the Project site is zoned R1-1-CUGU (Suburban Zone, Height District 1). According to the Community Plan's General Plan Land Use Map, the Low Residential land use designation corresponds to the RE9, RS, R1, RU, RD6, and RD5 zones, which accommodate a range of single and multi-family residential densities ranging from one unit per lot to one unit per 5,000 square feet of lot area.

As permitted by ED 1, the Project includes a request pursuant to State density bonus law ("DBL") codified at Government Code Section ("GCS") 65915 (as amended by Assembly Bill ["AB"] 1763, AB 2334, and AB 2345) and LAMC Section 12.22.A.25 for a Ministerial Density Bonus Compliance Review to permit unlimited density for a 100 percent affordable project with up to four development incentives/concessions and waivers. Consistent with DBL as amended by AB 2334 and the ED 1 Guidelines (p. 10), the Project may utilize the Project site's "maximum allowable residential density" to establish a base density calculation. Accordingly, pursuant to the Project site's Low Residential land use designation, the Project may utilize RD5 multi-family zoning density to establish a base density of 6.06 units, which rounds up to 7 units. Further pursuant to DBL as amended by AB 1763 and AB 2334 and the ED 1 Guidelines (pp. 4, 10, and 11), a 100 percent affordable housing development project located within one half mile of a major transit stop or located within a Very Low Vehicle Mile Travel Area ("Very Low VMT Area") may achieve unlimited density, as well as four development incentives/concessions and waivers. The Site is located in a designated Very Low VMT Area *and* within ½ mile of a major transit stop as defined by CA GCS 65915. Accordingly, the Applicant proposes to utilize these DBL and State law provisions, alongside ED 1's streamlined ministerial review process, to authorize the Project's proposed density, height, floor area, reduced parking and other development characteristics.

#### **D. Applicant Consultation with City and Project Submittals in Accordance with ED 1 and the HCA**

Out of an abundance of caution and to confirm that the Project's proposed entitlement strategy would be eligible for ED 1 processing, the Applicant communicated extensively with City and DCP staff regarding the applicability of ED 1 and DBL to the Project. In the course of these communications, City and DCP staff repeatedly and consistently confirmed that these requests would be accepted for ED 1 processing. After receiving these confirmations, the Applicant made a substantial investment in the Project site and proceeded with various submittals to seek approval of the Project. However, following the Mayor's issuance of the Revised ED 1, the City abruptly informed the Applicant that the Project was no longer eligible for ED 1 processing, notwithstanding its clear State law vested rights pursuant to the HCA.

The following is a timeline of the pertinent dates:

- March 21, 2023: The Applicant submitted and paid for a HCA Preliminary Application for the Project, in accordance with the City's guidance and established procedures. The HCA Preliminary Application reflects a proposed density of 78 units and a total square footage of construction of 38,528 square feet (included in Exhibit D). Pursuant to the HCA, the Applicant's submittal and payment of fees for the HCA Preliminary Application established vesting rights for the Project against future changes in City ordinances, policies, and standards. These vesting rights would terminate if the Project's full entitlement application was not submitted to the City within 180 days of the HCA Preliminary Application filing date, or if the Project's number of units or total square footage of construction was revised by 20 percent or more. The HCA Preliminary Application also includes reference to the ED 1 request in multiple locations, including a box checked off by Planning staff.
- May 9, 2023: The Applicant received DCP approval of an Affordable Housing Referral Form reflecting the Project's proposed entitlement strategy as well as its eligibility for ED 1 processing (included in Exhibit D). This is a critical pre-application form solely designed to confirm the Project's consistency with the State DBL. The form includes detailed information regarding Project density, height and parking. This form also includes an eligibility check box indicating that the Project is eligible for ED 1.
- May 31, 2023: The Applicant submitted and paid for a 100% Building Permit Application for the Project, including coordinated engineering and

architectural plans consistent with pre-entitlement referrals described above.

- June 21, 2023: The Applicant submitted and paid all required application submittal fees for the Case Filing, which reflects a total density of 78 units and a total square footage of construction of 38,420 square feet. The Project's vesting HCA Preliminary Application was acknowledged by DCP as part of the Case Filing, as evidenced by the "VHCA" suffix in the Case Filing number. The filing plans are included in Exhibit D.
- June 12, 2023: As noted above, the Revised ED 1 was issued, prohibiting all projects located in single-family zones from utilizing ED 1's streamlined ministerial process (even if the site's land use designation permits multifamily use and density).
- July 6, 2023: DCP issued the Notice of Ineligibility (Exhibit B) to the Applicant, which states in part:
  - "Per the revised Executive Directive 1 (ED1) issued by Mayor Karen Bass on June 12, 2023, projects located in single-family or more restrictive zones cannot use the ED1 Ministerial Approval Process. This revision affects projects in the following zones: OS, A1, A2, RA, RE, RS, R1, RU, RZ, and RW1. The proposed project located at 10898, 10898 ½, 10900 W Olinda St is in the R1-1-CUGU zone and is not eligible for ED1 processing."
  - The Notice of Ineligibility goes on to state: "To discuss other project review options or to revise the Affordable Housing Referral Form for the project, please contact the Affordable Housing Services Section at [planning.priorityhousing@lacity.org](mailto:planning.priorityhousing@lacity.org), or schedule an appointment for a consultation via BuildLA. *Please be aware that modification of entitlement requests will likely require updated and/or additional application materials including environmental clearance documentation.*" (Emphasis added.)
- July 10, 2023: DCP issued a letter to the Applicant titled "Status of Project Review: Application Incomplete and Case Processing on Hold," which listed four items required to be provided or revised to proceed with the processing of the case (attached as Exhibit A). After receiving this letter, the Applicant began working on compiling the requested items. Pursuant to

the HCA, the Applicant has 90 days to submit the specific information needed to complete the application.

- September 27, 2023 the Applicant responded to the “Status of Project Review: Application Incomplete and Case Processing on Hold” Letter with revised architectural plans within the 90 day timeline.
- October 27, 2023 the city failed to respond or acknowledge receipt of the related documents within the required 30 day timeline as required under Government Code Section 65943(a): “If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency’s determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.”
- November 17, 2023 the Applicant followed up email communication with planning staff to confirm receipt of the documents and to advise them that the case shall be deemed complete pursuant to stipulations in the HAA regarding the City’s failure to provide a written determination. The Applicant requested within 5 days a written determination of completeness.
- November 17, 2023, the City confirmed receipt of the documents.
- November 22, 2023, the City provided Exhibit F, “Letter of Non-Compliance”

To summarize, the Project submitted an HCA Preliminary Application during the effective period of the original ED 1, timely filed a full entitlement application within 180 days, has not revised the Project’s number of units or total square footage of construction by 20 percent or more, and therefore has satisfied all requirements to maintain vested rights as of the date of the HCA Preliminary Application (March 21, 2023) All this effort occurred after many discussions with City Planning Department staff and receipt of approved pre-application forms – all that confirmed and re-

confirmed the Project's eligibility for ministerial processing under ED 1. Despite these facts, the City has ignored the Project's State law vesting protections afforded by the completed HCA Preliminary Application and now refuses to process the project under ED 1. Instead, the City informed the Applicant that a different entitlement strategy must be pursued and then automatically converted the case to a discretionary process and sent an invoice requiring additional fees and materials necessary to process a discretionary case. The discretionary City Planning Commission density bonus process and the "other project review options" alluded to in the Notice of Ineligibility would all subject this 100 percent affordable housing project to discretionary and California Environmental Quality Act ("CEQA") review – substantially increasing processing time, cost and risk. The Applicant's decision to purchase the Project site and proceed with this Project was largely predicated on the expectation of ministerial and expedited processing under ED 1 with no associated discretionary or CEQA risk. The City's decision to abruptly issue the Notice of Ineligibility has now gravely threatened the Project's feasibility and viability. To ensure this outcome would not befall the Project, the Applicant intentionally filed an HCA Preliminary Application to lock in the rules and regulations in place at that time. As explained in detail below, the City cannot now conveniently choose to totally ignore State housing law's vesting protections and must grant this appeal and allow the Project's ministerial processing to continue.

## II. BASIS FOR APPEAL

### A. Government Code Section 65943(c)

As part of the HCA, Government Code Section 65943(c) provides an opportunity for appeal when an application for submittal has been determined not to be complete:

*"(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.*

*There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision*

*pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter.”*

As described in detail above, the Project’s completion of a HCA Preliminary Application and subsequent Case Filing established the Project’s vested rights, including the use of ED 1 as it existed on the date of filing the HCA Preliminary Application. Notwithstanding, the City subsequently determined that no vesting protections applied to the Project, the Project was no longer eligible to utilize ED 1 due to its location within a single-family zone, and the Case Filing application was therefore not complete and that updated and additional materials would be required to obtain entitlements to allow the Project.

The Applicant followed all City procedures, responded in a timely manner, and most importantly acted under the guidance of City employees and agents. The City’s failure to abide by State Laws, the Housing Accountability Act, and not provide responses in a timely manner shall serve as proper justification to deem this case complete.

As such, this appeal is filed in accordance with the procedure established by Government Code Section 65943(c) and must be routed to the City Council as the City’s governing body for a determination within 60 days.

### **B. Appeal Justification**

The City’s Notice of Ineligibility cites the Revised ED 1 as the justification for disallowing the Project from utilizing ED 1’s review process, but does not acknowledge nor address the Project’s HCA Preliminary Application or associated vesting protections. This action by the City represents a clear violation of the vesting protections provided by the HCA Preliminary Application filed for the Project and directly conflicts with the provisions and intent of the HAA as amended by the Housing Crisis Act of 2019 (i.e., Cal Gov. Code Section 65941.1). The City’s attempt to claim in the Second Status of Review Letter that the HCA Preliminary Application vesting only applies to the “LAMC provisions and land use plans” is a selective, overly narrow and erroneous interpretation that completely ignores the plain language of the HAA.

Specifically, the submittal of a complete HCA Preliminary Application pursuant to Government Code Section 65941.1 vests the right to develop a housing development project in accordance with the “ordinances, policies, and standards” in

effect when a HCA Preliminary Application is submitted.<sup>5</sup> The plain language of the statute makes it clear that not just ordinances or legislative actions may be vested against – other existing “policies” and “standards” promulgated by a jurisdiction may also be vested. To ensure there is no doubt regarding the breadth of those local regulations that may be vested against, the HAA specifically, intentionally and very broadly defines “ordinances, policies, and standards” to include “general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, *and any other rules, regulations, requirements, and policies of a local agency.*”<sup>6</sup> Given this statutory provision, any attempt by the City to claim that ED 1 – a formal regulation promulgated pursuant to the Mayor’s authority under the City’s Administrative Code – cannot be vested against because it is not an ordinance directly contradicts the plain statutory language and crystal clear intent of both the HCA and HAA.

To allow a jurisdiction to apply a different set of development standards to a qualified 100 percent affordable housing development project in the middle of the entitlement process would undermine the clear benefit of an HCA Preliminary Application. Further, the HAA explicitly requires that the vested right obtained through the preliminary application “shall not be construed in a manner that would lessen the restrictions imposed on a local agency, or lessen the protections afforded to a housing development project, that are established by any other law, including any other part of this section.”<sup>7</sup>

Furthermore, HCD has previously considered the issue of whether the vesting protections of a HCA Preliminary Application apply to a temporary set of circumstances, and has determined that vesting shall be maintained even when those circumstances change. Specifically, in a letter of technical assistance to this firm dated October 5, 2022, HCD determined that the submittal of a complete HCA Preliminary Application at a time that a jurisdiction does not have a compliant housing element would have the effect of vesting that jurisdiction’s noncompliant status throughout the proposed project’s entitlement process, regardless of whether the jurisdiction subsequently achieved compliance with State Housing Element Law during the entitlement process (which all jurisdictions are required to achieve).<sup>7</sup> Under this same logic, the filing of a HCA Preliminary Application for a qualifying project during the effective term of ED 1 would vest ED 1’s provisions for the entire duration of the project’s entitlement process, regardless of ED 1’s subsequent revision or

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<sup>5</sup> Government Code Section 65589.5(o)(1).

<sup>6</sup> Government Code Section 65589.5(o)(4).

<sup>7</sup> Government Code Section 65589.5(o)(5).

<sup>7</sup> HCD, October 5, 2022, Letter of Technical Assistance re: 3030 Nebraska Avenue, Santa Monica.

termination, or any claim by the City that ED 1 was of no further force or effect due to the expiration of the Mayor’s Emergency Declaration.

The HAA is intended to encourage and protect housing development, and affordable housing in particular, to the greatest extent feasible, and thus it should not be construed to allow jurisdictions to weaken vested development rights for affordable housing development projects. The HAA identifies specific barriers to housing production, including ever-increasing costs of land and development fees, discrimination against low-income and minority households and shortsightedness of local agencies, among others. It has been stated that the core purpose of the HAA is to provide “reasonable certainty to all stakeholders.”<sup>8</sup> The HAA even declares that “[i]t is the policy of the state that [the HAA] be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.”<sup>9</sup> In no case are these foundational HCA principles more critically important than with 100 percent affordable housing projects.

Prior to approval of any affordable housing development project, developers must invest significant costs to design and perfect project plans, analyze potential environmental impacts, and submit applications, all the while incurring hefty consultant and legal fees. To allow the City to change applicable development standards mid-way through an approval process or to claim that a previously available entitlement process was no longer valid, after the filing of a HCA Preliminary Application, would invite manipulation and inject immeasurable uncertainty into the housing development process that would be inconsistent with the clear intent of the HAA.

To be clear, we wholeheartedly applaud Mayor Bass’ extraordinary efforts to address Los Angeles’ affordability crisis since being recently elected to office. ED 1 has been a massive success story – streamlining and spurring the production of the most needed type of housing in the City. Our firm has seen it first hand as numerous clients have enthusiastically seized this benefit to deliver 100 percent affordable housing projects in record time. We also completely understand the reasons behind the Mayor’s decision to formally amend ED 1 to *prospectively* prohibit the ministerial and streamlined processing benefits to apply to projects filed on single family zoned properties *in the future*, notwithstanding the allowances and protections afforded by the State DBL. That is a rational and understandable policy decision, and unquestionably within the Mayor’s authority. Our **only** issue and concern is ensuring

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<sup>8</sup> *CaRLA v. City of San Mateo* (2021) 68 Cal App.5th 820, 842 [quoting Assem., 3d reading analysis of Assem. Bill No. 1515, as amended May 1, 2017, p. 2].

<sup>9</sup> Government Code Section 65589.5(f)(1).

that applicants who filed timely applications under the prior ED 1 (an official City regulatory order) and obtained a legal vested right under the HCA to proceed under the terms of that prior order do not have their investments completely upended and their projects substantially delayed and put at risk given the uncertainties and risks inherent in the discretionary review process.

For the above reasons and given the HAA's clear purpose of maximizing the production of housing, including the affordable housing so desperately needed in the City, the City's move to terminate the processing of this Project represents a clear violation of the HAA. We respectfully request that the City grant the appeal, reinstate the processing of the Project's Case Filing, deem the case complete, and grant approval of the Project pursuant to the streamlined review procedures of ED 1.

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Sincerely,

A handwritten signature in black ink that reads "Jeff Zbikowski". The signature is written in a cursive, flowing style.

Jeff Zbikowski  
JZ Development LLC

Attachments

- Exhibit A – Status of Project Review
- Exhibit B – Notice of Ineligibility
- Exhibit C – Second Status of Project Review
- Exhibit D – Project Documents
- Exhibit E- Applicant's Responses to Status of Project Review
- Exhibit F – Letter of Non-Compliance

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